

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2849 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAYABEN KANUBHAI NATWARLAL GANDHI

Versus

COMMISSIONER OF POLICE

Appearance:

Mr. N.M.Kapadia, learned Advocate for the petitioner.

Mr.U.R.Bhatt, learned AGP for the respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 18/07/96

ORAL JUDGEMENT

Jayaben wife of Kanubhai Natwarlal Gandhi has filed this petition under Article 226 of the Constitution of India challenging the order dated 29-2-1996 passed by the Commissioner of Police, Surat City under sub-section (1) of section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 detaining her husband Kanubhai Natwarlal Gandhi @ Ganchi .

In the grounds of detention supplied to the

detenu, the detaining authority has placed reliance on the four cases registered against the detenu under the provisions of the Bombay Prohibition Act and the statements of two witnesses for the alleged incidents of 20-1-1996 and 28-1-1996. Considering this material, the detaining authority has recorded a finding that the detenu is a "bootlegger" within the meaning of section 2 (b) of the said Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him and, therefore, the impugned order is passed, which is under challenge in the present petition.

This petition is capable of being disposed of on the first contention advanced by Mr. Kapadia. Therefore, it is not necessary to refer to and deal with the other contentions advanced by him. He contended that the cases registered against the detenu are all prohibition cases and yet to be proved against the detenu. Assuming that the allegations made in the grounds of detention are true, in that event also, at the most the detenu can be held responsible for committing breach of the law and order and under no circumstances he can be held responsible for the breach of public order. Under the circumstances, the subjective satisfaction arrived at by the detaining authority that with a view to maintaining public order the detention of the detenu is necessary is not genuine and, therefore, the impugned order of detention is illegal and void.

I find considerable substance in the submission of Mr. Kapadia. All the cases registered against the detenu are for the alleged offences under the Bombay Prohibition Act filed against the detenu. Therefore, there is no question of the breach of maintenance of public order. Even, considering the statements of the witnesses relied upon by the detaining authority, in my opinion, they are vague and general and, therefore, in absence of any cogent material against the detenu, the subjective satisfaction arrived at by the detaining authority for the purpose of passing the order of detention against the detenu is not genuine.

In the result, this petition is allowed. The impugned order of detention dated 29-2-1996 is quashed and set aside. The detenu Kanubhai Natwarlal Gandhi Ganchi is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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